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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. DANIEL RENE LOPEZ, Defendant and Appellant.	H043323 (Santa Clara County Super. Ct. No. C1526411)

Defendant Daniel Rene Lopez pleaded no contest to one count of transportation, sale, or distribution of GHB[1] (Health & Saf. Code, § 11352, subd. (a))[2] and one count of possessing methamphetamine for sale (§ 11378). Defendant also admitted allegations that he possessed 28.5 grams or more of methamphetamine (Pen. Code, § 1203.073, subd. (b)(2)) and had a prior drug conviction (§ 11370.2). The trial court imposed a split sentence of six years eight months with the first four years to be served in jail and the remaining two years eight months to be served under mandatory supervision (Pen. Code, § 1170, subd. (h)(5)(B)).

[1] GHB is gamma-hydroxybutyric acid, a central nervous system depressant commonly referred to as a "date-rape drug." (<http://www.webmd.com/mental-health/addiction/date-rape-drugs> [as of Jan. 8, 2018].)

[2] All further statutory references are to the Health and Safety Code unless otherwise indicated.

On appeal, defendant challenges a condition of his mandatory supervision that provides that his electronic devices, including his cell phones, computers, laptop computers, and notepads are subject to search and forensic analysis, and that requires him to provide passcodes to conduct those searches. He contends the condition is unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*)[3] and is unconstitutionally overbroad. We reject defendant's challenge under *Lent*. We also hold the condition is not unconstitutionally overbroad because the infringement on defendant's diminished privacy rights while on mandatory supervision is outweighed by the state's need to closely monitor his reintegration into society. We will therefore affirm the judgment.

I. FACTS & PROCEDURAL HISTORY[4]

A. Charges and Plea

Defendant was charged in a first amended felony complaint with four felony drug offenses: transportation, sale, or distribution of GHB (§ 11352, subd. (a); count 1); possession of GHB for sale (§ 11351; count 2); transportation, sale, or distribution of methamphetamine (§ 11379, subd. (a); count 3); and possession of methamphetamine for sale (§ 11378; count 4). The prosecution alleged that defendant possessed 28.5 grams and more of methamphetamine (Pen. Code, § 1203.073, subd. (b)(2)). At the time of the offenses, defendant was on mandatory supervision for a prior felony conviction for possessing a controlled substance for sale (§ 11378) in Santa Clara County Superior Court case No. C1242369.[5] The first amended complaint also alleged that defendant had

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[3] *Lent* was superseded by statute on another ground as stated in *People v. Moran* (2016) 1 Cal.5th 398, 403, fn. 6 (*Moran*).

[4] This case resolved before the preliminary hearing and the parties waived a full probation report. The record therefore contains limited information regarding defendant's offenses or criminal history.

[5] Based on the offenses in this case, the prosecutor charged defendant with violating his mandatory supervision in case No. 1242369. Defendant admitted the violation and at sentencing in this case, the court continued his mandatory supervision in the prior case.

six prior drug convictions within the meaning of section 11370.2, subdivision (b)—five prior convictions for possession of a controlled substance for sale (§ 11378) and one prior conviction for transportation for sale of a controlled substance (§ 11379, subd. (a))—and that defendant had served four prior prison terms (Pen. Code, § 667.5, subd. (b)).

Pursuant to a negotiated disposition, defendant pleaded no contest to transportation, sale, or distribution of GHB (count 1) and to possession of methamphetamine for sale (count 4). Defendant also admitted he possessed 28.5 grams or more of methamphetamine and one of the prior drug conviction enhancements. In exchange for the plea, the parties agreed to a maximum prison sentence of six years eight months and that defendant would spend the first four years in jail and the last two years eight months under mandatory supervision (Pen. Code, § 1170, subd. (h)(5)(B)). The parties stipulated to a factual basis for the plea and agreed that the remaining counts and enhancements would be dismissed at sentencing.

B. Sentencing Hearing

In February 2016, the trial court sentenced defendant in accordance with the plea agreement. The sentence was based on the three-year lower term for transportation, sale, or distribution of GHB (count 1); three years consecutive for the prior drug conviction enhancement; and eight months consecutive for possession of methamphetamine for sale (count 4). The trial court made other orders that are not at issue on appeal and dismissed the remaining counts and enhancements.

The probation department recommended the trial court impose several conditions of mandatory supervision, including that "defendant's computer and all other electronic devices (including but not limited to cellular telephones, laptop computers or notepads) shall be subject to Forensic Analysis search." Defense counsel objected to the electronic devices condition, stating: "Given that there was a phone involved in this case[,] we will not object to a search of the phone, however we do object to all electronic devices being included as overly broad. There is no nexus with the underlying charge." Defense

counsel said the objection applied to computers and "[a]nything that's not a phone." The prosecutor responded that defendant would be subject to a general search condition, which "includes any and all property . . . , including electronic devices." The trial court stated, "[I]n today's day and age everyone seems to have some kind of electronic equipment. And it seems to be reasonable that if he's using his phone, he may use emails and who knows what else is in the computer. So I think that's part of his property like everybody else. So it should be subject to search and seizure."

The trial court ordered that while on mandatory supervision, "[t]he defendant's computers, electronic devices, including but not limited to cell phones, laptop computers and notepads are subject to search and forensic analysis. And that means that the defendant must provide passcodes to conduct those searches."[6] The trial court also imposed a general search condition, ordering defendant to "submit his person, place of residence, vehicle and all property under his control to a search at any time without the necessity of a warrant or probable cause whenever requested by any peace officer."

II. DISCUSSION

Defendant argues the electronic devices search condition is unreasonable under *Lent* because it bears no relationship to his crimes and is not reasonably related to his future criminality. He contends the condition is unconstitutionally overbroad because it infringes on his right to privacy and is not reasonably related to the state's interests in his rehabilitation or public safety. Defendant urges us to remand to the trial court to narrowly tailor a condition that allows for only a cursory search of his cell phone and no other searches or forensic analysis of his electronic devices without a warrant.

A. General Principles Regarding Probation and Mandatory Supervision

Although the parties refer to the electronic devices search condition as a "probation condition," defendant was denied probation and placed on mandatory

[6] We shall hereafter refer to this order as the "electronic devices search condition."

supervision under Penal Code section 1170, subdivision (h)(5)(B). We begin by reviewing general principles regarding mandatory supervision.

When a defendant is on mandatory supervision, the defendant "shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation." (Pen. Code, § 1170, subd. (h)(5)(B).) Although mandatory supervision has been characterized as "akin to probation" (*People v. Griffis* (2013) 212 Cal.App.4th 956, 963, fn. 2), courts have also observed that mandatory supervision is in some respects "more similar to parole than probation" (*People v. Fandinola* (2013) 221 Cal.App.4th 1415, 1423; accord, *People v. Martinez* (2014) 226 Cal.App.4th 759, 763 (*Martinez*)).

"The fundamental goals of parole are ' "to help individuals reintegrate into society as constructive individuals" [citation], " 'to end criminal careers through the rehabilitation of those convicted of crime' " [citation] and to [help them] become self-supporting.' [Citation.] In furtherance of these goals, '[t]he state may impose any condition reasonably related to parole supervision.' [Citation.]" (*Martinez, supra,* 226 Cal.App.4th at p. 763.) Generally, the goals of probation are rehabilitation of the defendant and protection of public safety. (*People v. Olguin* (2008) 45 Cal.4th 375, 380 (*Olguin*); *Moran, supra,* 1 Cal.5th at p. 402 [" 'probation [is] an act of clemency . . . , and its primary purpose is rehabilitative in nature' "].)

For these reason, mandatory supervision conditions have been analyzed "under standards analogous to the conditions or parallel to those applied to terms of parole." (*Martinez, supra,* 226 Cal.App.4th at p. 763.) Nonetheless, the standard for analyzing the validity and reasonableness of parole conditions is "the same standard as that developed for probation conditions." (*Id.* at p. 764; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1233 ["[t]he criteria for assessing the constitutionality of conditions of probation also applies to conditions of parole"].) In *Martinez,* the court applied those same standards,

including the *Lent* test, to conditions of mandatory supervision. (*Martinez, supra*, at p. 764.)

B. Standards of Review

As with conditions of probation, we review the reasonableness of conditions of mandatory supervision for an abuse of discretion. (*Martinez, supra*, 226 Cal.App.4th at p. 764; *Olguin, supra*, 45 Cal.4th at p. 379.) We review constitutional challenges to conditions of mandatory supervision de novo. (*Martinez, supra*, at pp. 765-766; *In re Sheena K.* (2007) 40 Cal.4th 875, 888 (*Sheena K.*) [whether a probation condition is unconstitutionally vague or overbroad is a question of law, which we review de novo].)

C. Reasonableness Under Lent

Under the *Lent* test, " '[a] condition of probation will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . ." [Citation.]' " (*Olguin, supra*, 45 Cal.4th at p. 379.) The *Lent* test "is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality. [Citation.]" (*Olguin, supra*, at pp. 379-380; see also *Martinez, supra*, 226 Cal.App.4th at pp. 764-765 [applying the *Lent* test to conditions of mandatory supervision].)

In *People v. Ebertowski* (2014) 228 Cal.App.4th 1170 (*Ebertowski*), this court rejected a reasonableness challenge to probation conditions that required the defendant to submit to warrantless searches of his electronic devices and provide the passwords to such devices and his social media sites. (*Id.* at p. 1173.) The defendant in *Ebertowski* threatened and physically resisted a police officer. He also identified himself as a gang member and made gang signs. He subsequently pleaded no contest to making criminal

threats and resisting arrest and admitted a gang enhancement allegation (Pen Code, § 186.22, subd. (b)(1)(B)). (*Ebertowski, supra,* at p. 1172.) After the prosecutor informed the trial court that the defendant had used a social media site to promote his gang, the court placed the defendant on probation with gang conditions that included the search and password conditions imposed in this case. (*Id.* at p. 1173.)

On appeal, the *Ebertowski* defendant challenged the password conditions as both overbroad and unreasonable. This court found the conditions were reasonably related to the defendant's crimes, as well as his future criminality, because they facilitated the effective supervision of the defendant's undisputed probation conditions, which included gang terms. The disputed conditions "were designed to allow the probation officer to monitor [the] defendant's gang associations and activities. . . . The only way that [the] defendant could be allowed to remain in the community on probation without posing an extreme risk to public safety was to closely monitor his gang associations and activities. The password conditions permitted the probation officer to do so. Consequently, the password conditions were reasonable under the circumstances, and the trial court did not abuse its discretion in imposing them." (*Ebertowski, supra,* 228 Cal.App.4th at p. 1177.)

Defendant relies on *In re Erica R.* (2015) 240 Cal.App.4th 907 (*Erica R.*) and *In re J.B.* (2015) 242 Cal.App.4th 749 (*J.B.*), two First District Court of Appeal cases. In *Erica R.*, the appellate court struck an electronics search condition in a Welfare and Institutions Code section 602 proceeding as unreasonable under *Lent*. (*Erica R.*, *supra*, at pp. 912-913.) The juvenile court declared the minor in *Erica R.* a ward of the court based on her unlawful *possession* of the drug Ecstasy (§ 11377, subd. (a)). (*Erica R., supra,* at p. 910.) The court placed the minor on probation subject to a search condition that included her " 'electronics day or night at the request of a Probation Officer or peace officer' " and that required the minor to give her passwords to her probation officer. (*Ibid.*) The Court of Appeal concluded the condition was invalid under *Lent* and struck the condition. (*Erica R., supra,* at p. 915.) As for the first prong of the *Lent* test, the

court concluded there was "nothing in the original or amended juvenile petitions or the record that connects Erica's use of electronic devices or social media to her possession of any illegal substance" and there was no evidence she used an electronic device to purchase the drug. (*Id.* at pp. 912-913.) Regarding the second prong, the court stated: "Obviously, the typical use of electronic devices and of social media is not itself criminal." (*Id.* at p. 913.) As for future criminality, the court stated, "There is nothing in this record regarding either the current offense or Erica's social history that connects her use of electronic devices or social media to illegal drugs. In fact, the record is wholly silent about Erica's usage of electronic devices or social media. Accordingly, '[b]ecause there is nothing in Erica's past or current offenses or [her] personal history that demonstrates a predisposition' to utilize electronic devices or social media in connection with criminal activity, 'there is no reason to believe the current restriction will serve the rehabilitative function of precluding Erica from any future criminal acts.' " (*Id.* at p. 913.)[7]

The minor in *J.B.*, another juvenile court proceeding, admitted committing a petty theft of a shirt with another minor. (*J.B.*, *supra*, 242 Cal.App.4th 752.) As a condition of his probation, the minor was required to submit to warrantless searches of his " 'electronics, including [his] passwords.' " (*Ibid.*) The primary issue in *J.B.* was whether the condition was reasonably related to the minor's future criminality. (*Id.* at p. 755.) The Attorney General argued the condition was necessary to help the probation officer monitor other probation conditions that prohibited drinking alcohol, using drugs,

[7] As the parties note, the question whether an electronics search condition is reasonable under *Lent* when it has no relationship to the crimes committed but was justified as reasonably related to future criminality because it facilitates supervision of the offender is pending review in the California Supreme Court in *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted February 17, 2016, S230923. The Supreme Court has also granted review and deferred briefing or further action pending its decision in *In re Ricardo P.* in more than 35 published and unpublished cases.

and associating with his coparticipant, and the condition was permissible because the minor had a diminished expectation of privacy. (*Ibid.*) The Court of Appeal concluded that the condition had no relationship to the minor's offense, since there was no evidence he "used e-mail, texting or social network Web sites to facilitate" the theft and that the juvenile court was speculating when it suggested electronic devices could be used to arrange the crime. (*Id.* at p. 754.) The court also concluded that since the minor's electronic search condition was not properly tailored to his circumstances, it was invalid under *Lent*. (*J.B.*, *supra*, at p. 756.) Distinguishing *Ebertowski*, where the defendant used social media to promote his gang, there was no evidence the minor in *J.B.* used electronic devices to commit the theft or engage in other illegal activity. (*J.B.*, *supra*, at p. 756.)

Defendant argues the electronic devices search condition, as applied to his devices other than his cell phone, is not reasonably related to his future criminality. (*Lent*, *supra*, 15 Cal.3d at p. 486.) He argues these was no evidence the instant offenses or his criminal history involved any electronic devices other than his cell phone. The Attorney General responds that since (1) defendant's crimes involved the transportation, sale, and possession *for sale* of both GHB and methamphetamine; (2) he had multiple prior convictions for similar offenses; and (3) he admitted he possessed 28.5 grams or more of methamphetamine, it appears defendant was "in the business of selling drugs in significant quantities." The Attorney General asserts the condition is related to future criminality because defendant repeatedly committed drugs offenses—even while on mandatory supervision—and since he used his phone, it is reasonable to infer that he would use other electronic devices to further his crimes.

"[P]robation conditions authorizing searches 'aid in deterring further offenses . . . and in monitoring compliance with the terms of probation. [Citations.] By allowing close supervision of probationers, probation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from

potential harm by probationers.' [Citation.] A condition of probation that enables a probation officer to supervise his or her charges effectively is, therefore, 'reasonably related to future criminality.' [Citations.]" (*Olguin*, *supra*, 45 Cal.4th at pp. 380-381.) Probation search conditions are intended " 'to deter the commission of crimes and to protect the public, and the effectiveness of the deterrent is enhanced by the potential for random searches.' " (*People v. Ramos* (2004) 34 Cal.4th 494, 506.)

In our view, the condition requiring all of defendant's electronic devices to be subject to search is reasonably related to his future criminality. Since defendant used a cell phone to arrange drug transactions, it was reasonable for the trial court to give the probation officer the ability to ensure that defendant was not violating his mandatory supervision by arranging drug sales through any electronic devices—whether a cell phone, laptop computer, or tablet. Although defendant had used a cell phone to conduct drug deals, it was permissible for the trial court to impose a more wide-ranging electronics search condition, "for conditions of probation aimed at rehabilitating the offender need not be so strictly tied to the offender's precise crime." (*Moran*, *supra*, 1 Cal.5th at pp. 404-405.) We think the same applies to conditions of mandatory supervision. If the electronic devices search condition is limited to defendant's cell phone, he could easily circumvent the condition by using some other device, like a tablet computer or laptop, to sell narcotics using many of the same functions and applications that are on his cell phone.

Unlike the minor in *Erica R.*, who admitted simple drug *possession*, the record amply demonstrates that defendant has a long history of prior convictions for *selling* narcotics. He had six prior convictions for either possession or transportation of a controlled substance for sale and had already served four prison terms for such conduct. His offenses involved two different drugs and defendant committed these crimes while on mandatory supervision for his most recent drug conviction. Allowing the probation officer to access this information will facilitate defendant's supervision and can deter

future criminality by ensuring that defendant does not attempt to resume selling drugs using his electronic devices. Given his criminal history and the use of a cell phone to commit his current offenses, we conclude the electronic devices search condition was reasonably related to future criminality for this repeat offender who sells narcotics.

Citing *People v. Appleton* (2016) 245 Cal.App.4th 717, 727 (*Appleton*), defendant argues "nothing was put forth that would justify a forensic search of [his] telephone, a search that would necessarily reveal mass amounts of personal information unrelated to criminality." In *Appleton*, a different panel of this court (the *Appleton* panel) found an electronics search condition valid under *Lent*, but overbroad, and remanded for the trial court to fashion a more narrowly tailored condition. (*Appleton*, *supra*, at pp. 724, 727.) Defendant's citation of *Appleton* is therefore misplaced as to the analysis under *Lent*.

For the foregoing reasons, we conclude the electronic devices search condition was reasonably related to preventing future criminality for this defendant. Since defendant cannot satisfy this third prong of the *Lent* test, the electronic devices search condition is reasonable and valid. We therefore shall not reach the parties' arguments regarding the first prong of the *Lent* test.

D. Constitutional Overbreadth Challenge

Defendant contends the electronic devices search condition is unconstitutionally overbroad because it infringes on his Fourth Amendment right to privacy and is not reasonably related to the state's interests in his rehabilitation or public safety. In the trial court, defendant objected that the condition was overbroad because it applied to devices other than his cell phone.

In the context of probation conditions, the California Supreme Court has stated that a "condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

"The touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.' [Citation.]" (*United States v. Knights* (2001) 534 U.S. 112, 118-119 (*Knights*).) A person's status as a probationer or parolee subject to a search condition informs both sides of that balance because probationers and parolees enjoy a lesser expectation of privacy than the general public. (*Id.* at p. 119 [probationer]; *Samson v. California* (2006) 547 U.S. 843, 850 (*Samson*) [parolee].)

The United States Supreme Court has "repeatedly acknowledged that a State's interests in reducing recidivism and thereby promoting reintegration and positive citizenship among probationers and parolees warrant privacy intrusions that would not otherwise be tolerated under the Fourth Amendment. [Citations.]" (*Samson, supra,* 547 U.S at p. 853.) "[T]he Fourth Amendment does not render the States powerless to address these [state] concerns *effectively*. [Citation.] . . . California's ability to conduct suspicionless searches of parolees serves its interest in reducing recidivism, in a manner that aids, rather than hinders, the reintegration of parolees into productive society." (*Id.* at p. 854.) Balancing the defendant's privacy interests against the government's interests, the *Samson* court held that "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee." (*Id.* at p. 857.) The question in this case is whether the government's right to conduct a suspicionless search of a person on mandatory supervision extends to data on the person's electronic devices.

Defendant relies on the United States Supreme Court's decision in *Riley v. California* (2014) 573 U.S. __ [134 S.Ct. 2473] (*Riley*) and this court's decision in *Appleton*. In *Riley*, the court held that the warrantless search of a suspect's cell phone implicated and violated the suspect's Fourth Amendment rights. (*Riley, supra,* at p. __ [134 S.Ct. at pp. 2472-2473].) The court explained that modern cell phones, which have

the capacity to be used as mini-computers, can potentially contain sensitive information about a number of areas of a person's life. (*Id.* at p. __ [134 S.Ct. at p. 2489].) The court emphasized, however, that its holding was only that cell phone data is subject to Fourth Amendment protection, "not that the information on a cell phone is immune from search." (*Riley*, *supra*, at p. __ [134 S.Ct. at p. 2493].)

Riley is inapposite since it arose in a different Fourth Amendment context. *Riley* involved the scope of a warrantless search incident to arrest of a person who had not committed a crime beyond a reasonable doubt and who was not on supervised release. (*Riley*, *supra*, 573 U.S. at p. ___ [134 S.Ct. at pp. 2480-2481].) The balancing of the state's interests and the defendant's privacy interests is very different in this case, which involves the mandatory supervision of a convicted felon with multiple prior convictions for selling narcotics. Moreover, *Riley* did not consider the constitutionality of conditions of probation, parole, or mandatory supervision. Persons on supervised release do not enjoy the absolute liberty to which every citizen is entitled and the court may impose reasonable conditions that deprive an offender of some freedoms enjoyed by law-abiding citizens. (*Knights*, *supra*, 534 U.S. at p. 119 [probationers]; see also *In re Q.R.* (2017) 7 Cal.App.5th 1231, 1238 (*Q.R.*), review granted April 12, 2017, S240222 [*Riley* involved a person's "preconviction expectation of privacy"].)

This court rejected an overbreadth argument in *Ebertowski* where the challenged probation condition required the defendant to " 'provide all passwords to any social media sites, . . . and to submit those sites to search at any time without a warrant by any peace officer.' " (*Ebertowski*, *supra*, 228 Cal.App.4th at p. 1172.) The defendant in *Ebertowski*, a member of a criminal street gang, used social media to promoted his gang. This court rejected the defendant's claim that the condition was "not narrowly tailored to [its] purpose so as to limit [its] impact on his constitutional rights to privacy, speech, and association" and concluded that the state's interest in preventing the defendant from

continuing to associate with gangs and participate in gang activities, which was served by the condition, outweighed the minimal invasion of his privacy. (*Id.* at p. 1175.)

In *Appleton*, the defendant pleaded no contest to false imprisonment by means of deceit. (*Appleton*, *supra*, 245 Cal.App.4th at p. 720.) The trial court granted probation and imposed a condition making the defendant's computers and electronic devices " 'subject to forensic analysis search for material prohibited by law.' " (*Id*. at p. 721.) The only connection to electronic devices in *Appleton* was that the defendant met the minor victim on social media several months before the crime occurred. (*Id.* at pp. 719-720.) On appeal, the defendant challenged the search condition as both unreasonable and overbroad. (*Id*. at pp. 723-724.) The *Appleton* panel concluded that although the challenged condition was reasonable, it was unconstitutionally overbroad, and remanded to the trial court to "consider fashioning an alternative probation condition." (*Id*. at p. 729.) Relying on *Riley*, the *Appleton* panel held that the condition was overbroad because it "would allow for searches of vast amounts of personal information" (*Appleton*, *supra*, at p. 727) that "could potentially expose a large volume of documents or data, much of which may have nothing to do with illegal activity," including "for example, medical records, financial records, personal diaries, and intimate correspondence with family and friends" (*id*. at p. 725). The *Appleton* panel concluded that "the state's interest here—monitoring whether defendant uses social media to contact minors for unlawful purposes—could be served through narrower means," such as by imposing "the narrower condition approved in *Ebertowski*, whereby defendant must provide his social media accounts and passwords to his probation officer for monitoring." (*Id*. at p. 727, fn. omitted.)

Defendant urges us to follow *Appleton* and remand to the trial court to fashion a more narrowly tailored condition of mandatory supervision related to his electronic devices. Echoing themes from *Riley*, defendant argues that a cell phone may contain data dating far back in time and can implicate data that is not stored on the device itself that

may be accessed via cloud computing. (See e.g., *Riley*, *supra*, 573 U.S. at p. __ [134 S.Ct. at p. 2491].)

Here, the search condition regarding defendant's electronic devices properly serves the state's interest in preventing defendant from using electronic devices to engage in criminal activity such as the sale of narcotics. Indeed, defendant recognizes that some intrusion on his privacy rights would be justified, since he does not object to applying the electronic devices search condition to his cell phone. Moreover, electronic information is easily transferable between devices. By allowing the search of other electronic devices, the condition ensures that defendant is not engaging in narcotics sales by the use of any electronic device. As we have said, if the electronic devices search condition is limited to defendant's cell phone, he could easily circumvent the condition by using some other device, like a tablet computer or laptop, to sell narcotics using many of the same functions and applications that are on his cell phone, and the probation officer would not be able to effectively monitor defendant's activity while he is on mandatory supervision.

Citing *J.B.*, *supra*, 242 Cal.App.4th at p. 759, defendant contends the electronic devices search condition is overbroad because it implicates the privacy interests of third parties. The Attorney General responds that defendant lacks standing to assert the constitutional rights of third parties and that defendant does not explain how the privacy rights of third parties would be affected. This court rejected a similar contention in *Q.R.*, reasoning that the minor in that case "can safeguard the rights of third parties by advising them that information they make accessible to him is not private. Further, any speculative impact on third parties is not a reason to strike the condition since [the] minor lacks standing to assert the constitutional rights of third parties." (*Q.R.*, *supra*, 7 Cal.App.5th at p. 1237, review granted April 12, 2017, S240222.) We find this reasoning persuasive and adopt it here.

For these reasons, we conclude the electronic devices search condition is not overbroad.

III. DISPOSITION

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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PREMO, J.